TESTIMONY OF RAY B. CHAMBERS

On Behalf of: the
National Railroad Construction and Maintenance Association (NRC)

"AMTRAK REFORM PROPOSALS"

Subcommittee on Railroads
House Committee on Transportation and Infrastructure
Room 2167 Rayburn House Office Building

Wednesday, September 21, 2005, 10:00am

I am Ray Chambers, President of the NRC. Our members build, repair and maintain a substantial portion of America's railroad infrastructure for Class I railroads, regional and short line railroads and commuter and transit authorities. We passionately believe in the future of the rail mode. We believe intercity passenger service must be a part of that future. We have launched an Association initiative to evaluate the future of intercity passenger rail and have reached conclusions and made recommendations, which we are presenting in this testimony for the first time.

Confused by the number of reform proposals, and the claims and counter claims by those with vested interests, I was directed by the NRC Board in January to evaluate all reform proposals that are on the table. I was asked to present a recommendation at our July Board meeting for a practical program to secure the future of intercity rail passenger that is affordable and politically viable. The contractors authorized me to retain Lou Thompson to help analyze the proposals and prepare a recommendation. Lou was an Associate Administrator of the Federal Railroad Administration responsible for the creation of the Northeast Corridor in the 1970's. He then spent a distinguished career as Rail Advisor to the World Bank.

Is international practice important to America? Pressed by the EU, World Bank and IMF, there is a growing move toward freight and passenger commercialization and privatization across the globe. Of course, there are major rail cultural, structural and political differences that must be taken into account. But there are also “best practices” where one system can learn from the other. North America leads the world with our efficient freight operations. In Europe, Australia and Japan, private passenger operators are doing well—generally under purchase-of-service contracts with government authorities. Uniformly, ridership is up. A similar program is beginning to take hold with commuter agencies in the North America.

The British privatization has been the most continuously maligned effort in the world. Certainly it has it critics in Britain—and indeed there were problems in the implementation. In my view it was too abrupt and too hard edged. But, even in Britain, the results of the private passenger operators are surprising. In the last 7 years operating expenses are down by 20% and operating subsidies are down. Safety has improved.[1] The safety record of the privatized companies is better than the old nationalized British Rail ever achieved. Investment in new passenger rolling stock is at record levels. Today Britain has the youngest passenger fleet in Europe or North America. The private operators have increased the number of passengers carried by 35%. Lou Thompson and I will be happy to provide this committee with documentation on the success of private rail passenger operations around the world if you wish.[2]

In preparation for our July Board meeting, Lou Thompson and I evaluated all current legislative proposals for reform, except the Lott-Lautenberg proposal which had just been introduced. Lou and I and several contractor members met with a wide variety of stakeholders in government and industry to discuss the concept of comprehensive reform. This included discussions with Amtrak Board representatives and the highest tier of Amtrak executives and numerous state officials. Throughout the process we consulted with our Board Members for guidance. The two principal Board Members were our NRC Chairman, Rick Ebersold with Herzog Contracting Corp. of St. Joseph, Missouri and our immediate Past Chairman Larry Laurello with Delta Railroad Construction of Ohio.

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[1] The so-called Hatfield accident, in which 4 lives were lost, shook Britain to the core and led to a major restructuring of the infrastructure company. Nevertheless, safety has improved.

[2] I spent last week in Budapest as a delegate to the Central and Eastern European Rail Executive Summit-2005 as a representative of the Seneca management consulting company which has been advising the Romanian government on rail restructuring since 1999. Presentations were made by the private passenger operators who are proliferating throughout Europe. It became clear to me that these operations are generally successful. Despite negative publicity, Britain is no exception. Service has expanded, safety has improved and ridership is up. One chart in an operator presentation stated that the passenger operating subsidy in Britain over 7 years has declined from $1.8 billion a year to about $755 million. The problem in Britain was the "cold turkey" spinning out of the under-maintained infrastructure into a company called Rail Track. Rail Track became increasingly capital starved. The track problem was compounded by the fact that the private operators, freight and passenger, grew rapidly under private operators. This problem is now being fixed with a new infusion of capital into the reorganized track company known as Network Rail. Network Rail is owned by the stakeholders—and is not a for profit organization. But—the passenger operating side has largely been a success. In September 2004, the World Bank issued a Transport Paper entitled "Privatizing British Railways – Are There Lessons for the World Bank and its Borrowers?" It was authored by Lou Thompson.

In the interest of full disclosure, there is an NRC vested interest. That interest is to promote and protect competitive private contracting for infrastructure construction, maintenance and operations wherever government dollars are involved. We recommended adoption of 6 guiding principals for reform:

1. **A major new infrastructure investment program is necessary if this country is to have successful intercity passenger operations.** With the exception of the Northeast Corridor (NEC) all federal grants for track construction and upgrades under this program should be directed to the states.[3]

2. **Federal transportation policy should direct these federal subsidies to infrastructure and capital, not passenger operations.** Except as required by labor bargaining agreements between track owners and rail unions, all federal grants for intercity passenger corridor construction and upgrades should be competitively bid.

3. **Commercial principals, including competition and private sector involvement, should be injected into the reform of passenger operations to the maximum extent possible. In this regard, there should be no subsidy for passenger operations, but rather Public Service Obligation Contracts (PSO) between government authorities and operators.** All existing subsidies should be converted to PSOs. Under this concept, a government authority will contract with an operator, which may or may not be Amtrak, to provide a level of service under the contract.[4]

4. **Intercity passenger operations should be free from political interference and state ownership.** All passenger operators, including Amtrak, should ultimately be free of state ownership and thus free from political interference and advantage.

5. **Amtrak should be put on a track to become a private operator as quickly as possible through a pragmatic restructuring process.** This can be done through a program of commercial governance, removing legacy debt and PSOs.

6. **During the restructuring process, Amtrak should stick to its core business of running intercity passenger service and not become a contractor itself.**

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[3] The NRC and our Unions were alarmed three years ago when a proposal emerged in the Senate which would have directly provided Amtrak with $12 billion tax-credit subsidized bond financing to build intercity passenger corridors. This would have created a federally subsidized Construction Monolith with the potential to put our private members out of business. The House reported version of this concept was contained in RIDE—21. Fortunately, it channeled the bond money for construction thorough the states. Under no circumstances should Amtrak as an operating railroad be the direct recipient of infrastructure bond financing. The NEC is the exception. Here NRC proposes that NEC Operations and NEC Infrastructure be separated into two companies, both reporting to the Amtrak Board of Directors.

[4] This is not a subsidy—this is government bodies paying a fair price for a social service.

> Amtrak should focus on its NEC and long distance National Network operations and not bid for third party contracts for construction, maintenance or passenger operations.

We evaluated all of the reform proposals on the table, except the Passenger Rail Investment and Improvement Act (Lott-Lautenberg) which was reported out of the Senate Commerce Committee as S. 1516. We are in the process of finishing an evaluation of Lott-Lautenberg, and will be pleased to submit it to the Committee.[5] S. 1516 has a number of very good ideas that need to be incorporated into a final reform package. We also believe it is flawed as currently written. It fails to actively promote private sector involvement and continues Amtrak into the future as a monolithic politically directed government organization. A rail operation with a politically appointed Board of Directors is doomed to repeat the failures of the past. We have just received the so-called Rail Infrastructure Management (RIM) proposal about which there is testimony this morning. We will also undertake a review and report our opinions back to the Committee.

Our analysis of all proposals led us to the conclusion that the reform vision contained in "Amtrak Strategic Reform Initiatives" proposed by Amtrak Board Chairman David Laney and Amtrak President David Gunn, released last April, is the best work to date on this complex issue. Our NRC plan is centered on the Gunn-Laney Amtrak Strategic Reform initiatives. We are a stakeholder, and our goal is to work with all stakeholders to build a practical legislative reform proposal around the Strategic Reform Initiatives. There are many compromises to be reached, but we think, with good will all around, it can be done.[6]

The NRC Reform Proposal for Implementation of Strategic Reform

On July 20, 2005, the Board of Directors of the National Railroad Construction and Maintenance Association met at the Laurello Vineyards in the heart of Chairman LaTourette's Congressional District to review the Thompson-Chambers recommendation. Our past Chairman Larry Laurello is not only a past Chair of NRC, and owner of Delta Railroad Construction, but he also owns a fine vineyard where he hosted our Board meeting. I want to be clear that we had a full sober discussion of the issues and adopted our resolution, prior to sampling Mr. Laurello's most excellent product. The following summarizes the Resolution (which is contained in full following this testimony)

> *NRC urges adoption of a specific Comprehensive Framework for Intercity Passenger Reform that is consistent with the President's*

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5 We believe a "fresh start" reform bill is the best idea. However, we also believe it is possible to "fix" the bill. Our analysis will provide a list of corrections and additions that will make the bill acceptable.

6 These compromises include a need to protect the interest of rail labor that may be subject to some disruption during the reform process. The Lautenberg bill makes a good start of this vexing issue. The interests of the Class I track owners must also be protected if alternative operators are to be introduced. We believe the existing "arms-length" commuter model provides the key.

goals and the Reform Framework put forward by Amtrak Board Chairman David Laney and Amtrak President David Gunn. The proposed Reform is divided between Advance Reform and Long Term Reform and is to be implemented during an intercity passenger transition between 2006-2010.

The NRC proposal combines a long term Comprehensive Restructuring Process (2006-2010) with a near term 1 year action plan called Advance Reform-2006. During the 5 year restructuring process Amtrak will focus on its core operations while undergoing radical restructuring with the goal of emerging as a stable, effectively managed company.[7]

Advance Reform-2006 is a specific proposal to begin the process. We believe the specific idea meets the first stages of the President's reform objectives as well as the objectives of both President Gunn and Chairman Laney of Amtrak.[8] The Advance Reform would be accomplished through existing statutory authority which permits the Secretary to make grants to Amtrak. It requires a sufficient appropriation for fiscal year 2006 and a willingness by the Secretary to divide the grant making between the 5 business lines. There is urgency to this request because the appropriation for fiscal year 2006 is moving rapidly through the Congress. As a practical matter this represents the last chance to initiate meaningful reform in 2006.[9]

The central element of the Advance Plan is a call for the Amtrak Board to quickly implement the Gunn-Laney *Strategic Reform Initiatives* proposal and create the 5 lines of business. The Secretary should then divide the subsidy grants for intercity passenger service among the 5 business lines.

At the heart of our 2006 proposal is the initiation of a new robust State Corridor Operations program. The Gunn-Laney SRI combined 15 corridors into the National System to be fully federally subsidized, and put 24 Corridors on the table for spin-off to the states. We fully agree with the SRI proposal and believe this is a good place to jump-start the process in 2006. We are confident that beginning to spin the State and Regional

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[7] Core operations are NEC Infrastructure Management; NEC train operations; and National System Train Operations. During the interim period of restructuring (2006-2110) Amtrak will not bid on outside contracts for track maintenance or construction or rolling stock repair or commuter operations or anything that diverts from restructuring and reforming core operations. This prohibition may be lifted, in whole or in part, during the 5 year Transition if the Secretary stipulates that Amtrak or a specific subsidiary operates on a fully transparent, for profit basis under Public Service Obligation contracts just as any other private sector contractor or operator.

[8] *Strategic Reform Initiatives* was released in April 2005. It is a vision statement developed jointly by the Amtrak Board of Directors led by Chairman of the Board David Laney and the senior Amtrak management team led by President David Gunn.

[9] This is a serious matter in the Bush Administration. Secretary of Transportation Norm Mineta has stated that if substantial reform is not undertaken, he will recommend a veto of the fiscal year 2006 Transportation Appropriation.

Corridor Lines out to the states in 2006 will simplify the Amtrak process of getting control of the National System Trains and should cut Amtrak's losses significantly.

The second piece is our proposal for a Long Term Comprehensive Reform Program that combines the best elements of the Gunn-Laney Strategic Reform Initiatives, the Bush Administration Proposal, the Lott-Lautenberg bill and the Mica Draft Amtrak Reform Proposal (which has been informally circulated). The RIM proposal must be evaluated and factored in. One intriguing concept, suggested to me by a state official, is to center the long term reform process on a Final Plan Concept. The Final Plan Concept program was enormously successful in restructuring the bankrupt freight carriers of the Northeast in the 1970s.

There are many interests that yet need to be heard in a fair and open forum for consensus building. NRC is proposing a conceptual framework. We recognize this needs additional consultation and consensus building with all stakeholders. We urge this Committee and staff to work with the idea of Advance Reform-2006 as a good faith effort to initiate a long term comprehensive package. We should not rush headlong into a fix that really fixes nothing at all. After nearly 40 years of failure, let's put together something that works. We put forward a specific Long Term Federal Restructuring Framework for your consideration.

The following is the outline of the NRC proposed reform process. NRC thanks you for the opportunity to testify.

INTERCITY PASSENGER REFORM TRANSITION PLAN 2006 - 2010

Advance Reform 2006

2005-2006 - Action to be taken by Amtrak Board and the Secretary

- Amtrak Board formalizes and implements reporting according to the 5 business lines (Gunn-Laney)

- The Amtrak Board will establish NEC Infrastructure as separate Amtrak subsidiary reporting directly to the Board of Directors. NEC Infrastructure subsidiary will have its own Board composed of stakeholders from Amtrak, states (some represented by their commuter rail authorities) and freight operators.[10]

- Amtrak Board launches Advance Private Initiatives Program (ancillary privatization including rolling stock repair and rehab, stations operations, food/beverage outsourcing, etc.)

- Secretary announces State/Regional Corridor Program for 2006

- Secretary/Board solicits states for Advance Reform State/Regional Corridor Operating Proposals for implementation in fiscal year 2006

2005-2006 – Action to be taken by Congress

To be enacted in 2005:

A. An adequate appropriation for fiscal year 2006 to launch advance reform--$1.2 Billion to $2.0 Billion.

B. The Amtrak Board of Directors restructures Amtrak reporting into 5 lines of business (Gunn-Laney)

[10] Such a Board will allow a transparent and consultative process between the commuter authorities that operate 90% of the trains over the NEC and Amtrak with its end-to-end operations representing nearly 60% of the train-miles traveled over the corridor.

C. The Secretary will disburse the appropriation through Grant Agreements in accordance with the 5 lines of business. (In April 2005, Gunn-Laney SRI made a proposal based on their requested $1.8 billion appropriation[11]):

- NEC Infrastructure - $479 million;
- NEC Operations (Acela and Metroliner) – $0 (operating profit anticipated if access charges are based on avoidable costs)
- National Long Distance System - $537 million
- Ancillary Business - $0
- System support and Security - $254 million
- State Corridor Operations-To be administered by the Secretary FRA - $166 million

D. *The Secretary is directed to undertake a detailed study of ownership and management alternatives for the NEC Infrastructure, estimate the cost of a "state of good repair" program, sources of funding, and methods and formulas for establishing ownership, management and access.*

- The Study should evaluate efficient and non-discriminatory access charges for all users. The management alternatives assessed should include establishment of a Federal/State joint venture to control, maintain and improve the NEC infrastructure.
- Alternative proposals, including the RIM proposal should be considered.

E. Regarding NEC Infrastructure, NEC Operations and the National System Trains, Amtrak is directed to seek private sector participation wherever cost effective. In the grant making process, the Secretary will give priority to demonstrations utilizing private partners.

F. The Secretary is directed to initiate 2006 Advance State Corridor Operations with grants directly to the states.

- Once a state selects an alternative operator, the Secretary will retain his current statutory binding arbitration authority (possibly modified) to assure state access to necessary Amtrak assets (reservation, rolling stock, station access, etc.).[12]

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[11] These numbers are those proposed by Gunn-Laney based on their request for a $1.8 billion appropriation. The House of Representatives has approved an appropriation of $1.2 billion. The Senate Appropriations Committee approved $1.45 billion appropriation. This recommendation for the subsidy division among the 5 lines of business will need to be revised downward to reflect the anticipated appropriation for FY 06.

[12] The issue of providing Amtrak assets for state operations should not be confused with the question of track access for states or alternative operators to freight railroad infrastructure. The question of access to track owned by a private railroad by an alternative operator or a state is critical. The Bush Administration proposes a separate "Authority" be established to supervise access. The Gunn-Laney *Strategic Reform Initiatives* proposes the Amtrak Board be authorized to transfer Amtrak access rights. NRC believes State/Regional Corridor access should be transferred on terms acceptable to the host railroad and the FRA. We suggest an FRA licensing process for new operators with track owner participation, and that existing

F. The Secretary is authorized to provide States that take responsibility for intercity passenger service with direct grants for State Supported Operations. The grant ceiling will be based on a "Total Loss" formula calculating the Amtrak loss on the route.[13]

- The Secretary will devise a plan for the most cost effective comprehensive insurance coverage for State subsidized operations.

G. Amtrak is directed to focus on its core business of operating National System trains and the NEC and to refrain from engaging in third-party contract operations.

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passenger operators are grandfathered. Access fees for additional service above existing levels and/or speeds should be negotiated "at arms length," similar to commuter arrangements.

[13] During the Transition, at state option, Amtrak may continue to operate State Corridor trains under existing arrangements with the state. While the states may continue existing contracts, during the transition Amtrak should not bid on State Corridor Operations in state competitions due to inherent advantages of entrenched incumbency and the need to encourage alternative passenger operators. In 2006, grants from the State Corridor Operations Account should be made by the Secretary directly to an applying state regardless of whether Amtrak continues to operate legacy services. In disbursing the available grant money the priority shall go to States initiating State Operations.

Long Term Federal Restructuring Framework -- 2007-2011

NRC endorses implementation of a Long Term Federal Program that combines the best elements of the Gunn-Laney Strategic Reform Initiatives, the Bush Administration Proposal and the Mica Draft Amtrak Reform Proposal (which has been informally circulated). We propose the following framework:

- Establish a Federal Capital Program (Gunn-Laney modified) with the effect of 80/20 Federal/State finance for investments needed to add capacity for intercity rail passenger operations supported by state or regional authorities.

- Amtrak to operate the National System Trains (15 current routes) under purchase of service obligation (PSO) contract with the USDOT to provide 100% of any loss plus adequate allowance for capital and a reasonable return on investment.

- Amtrak to operate NEC trains at a profit with access charges based on avoidable cost.

- Amtrak to own and manage NEC Infrastructure as a separate subsidiary.[14] Federal government to fully finance returning the NEC to "a state of good repair."[15]

- State Corridor trains come under state or regional-compact control.[16]

- Labor Reforms and Labor Protection Regime to be negotiated by stakeholders.[17]

- Legacy Debt Restructuring be put in place

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[14] (Regarding the new NEC Infrastructure Company proposal, see point D – page 5 & footnote #5) In addition, NRC proposes that Congress direct the Secretary to assure that all grants for infrastructure rehabilitation or improvement, or rolling stock maintenance or repair that exceed routine maintenance, are competitively bid.

[15] Both the Bush plan and the Gunn-Laney *Strategic Reform Initiatives* call for returning the NEC infrastructure to "a state of good repair." The DOT Inspector General estimates that this alone will cost $5,000,000,000. NRC believes this should be an obligation of the Federal government. It is also our view that all NEC infrastructure users, including Amtrak, commuters and freight railroads, should pay access charges on the same, non-discriminatory basis.

[16] Once State Corridor Trains are transferred to State control, the Secretary will provide a 5 year operating subsidy based on the "Amtrak Total Loss" for the corridor—to be phased out in equal stages over the 5 year period. The States will have access to 80-20 matching funds for infrastructure capital improvements and rolling stock acquisition and repair.

[17] A price of reform will undoubtedly include some employee disruption. NRC believes a "right for first hire" should be established with private companies who undertake traditional Amtrak functions. Any Amtrak employee suffering a job loss in the competitive bid process or the initiation of state subsidized service or the loss of commuter operations should be eligible for a separation payment or early supplementary retirement benefit. We believe a $50,000 payment ceiling to be reasonable.

NATIONAL RAILROAD CONSTRUCTION AND MAINTENANCE ASSOCIATION
-NRC-

NRC BOARD RESOLUTION

Whereas, world-class intercity passenger rail service should be a component of the national transportation network of the United States;

Whereas, the deterioration of the national intercity passenger carrier continues at an accelerated pace and Amtrak is in danger of financial collapse;

Whereas, if Congress and the Administration do not provide sufficient funding and enact significant reform, the Nation may face a traumatic failure of intercity rail passenger service;

Whereas, proposed Amtrak reform plans have been put on the table, including those developed by the Bush Administration and by the Amtrak Board/Amtrak Management (Gunn-Laney *Strategic Reform Initiatives*) and the Senate Commerce Committee:

Therefore, NRC urges adoption of a specific Comprehensive Framework for Intercity Passenger Reform that is consistent with the President's goals and the Reform Framework put forward by Amtrak Board Chairman David Laney and Amtrak President David Gunn. The proposed Reform is divided between Advance Reform and Long Term Reform and is to be implemented during an intercity passenger transition between 2006-2010.

Adopted July 20, 2005

Rick Ebersold	Ray Chambers
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Chairman, NRC	President, NRC -